

SUBCHAPTER N: PUBLIC NOTICE OF POST-CLOSURE ORDERS

§§39.801 - 39.810

Effective January 30, 2003

§39.801. Applicability.

The requirements of this subchapter apply to applications for a post-closure order, as defined in §335.2 of this title (relating to Permit Required).

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§39.802. Public Comment and Notice.

(a) Public notice and the opportunity to comment shall be provided:

- (1) when the agency declares an application for a post-closure order administratively complete;
- (2) prior to final approval of the proposed post-closure order; and
- (3) at the time of a proposed decision that remedial action is complete at the facility.

(b) The public comment periods described in subsection (a) of this section shall end 30 days after the last publication of the appropriate notice.

(c) Public comments for post-closure orders shall be processed under §55.156 of this title (relating to Public Comment Processing).

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§39.803. General Notice Provisions.

(a) Failure to publish notice. If the chief clerk prepares a newspaper notice that is required by this subchapter and the applicant does not cause the notice to be published within 30 days after the executive director has declared the application administratively complete, filed the proposed post-closure order or proposed decision that remedial action is complete with the chief clerk, or fails to submit the copies of notices or affidavit required in subsection (d) of this section, the executive director may cause one of the following actions to occur:

- (1) the chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication; or

(2) the executive director may suspend further processing or return the application. If the application is resubmitted within six months of the date of the return of the application, it shall be exempt from any application fee requirements.

(b) Electronic mailing lists. The chief clerk may require the applicant to provide necessary mailing lists in electronic form.

(c) Mail or hand delivery. Notice by hand delivery may be substituted for mailed notice. Mailing is complete upon deposit of the document, enclosed in a prepaid, properly addressed wrapper, in a post office or official depository of the United States Postal Service. If hand delivery is by courier-receipted delivery, the delivery is complete upon the courier taking possession.

(d) Notice and affidavit. When this subchapter requires an applicant to publish notice, the applicant must file a copy of the published notice and a publisher's affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file a copy of the published notice, which shows the date of publication and the name of the newspaper, is ten business days after the last date of publication. The deadline to file the affidavit is 30 calendar days after the last date of publication for each notice. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice. When the chief clerk publishes notice under subsection (a) of this section, the chief clerk shall file a copy of the published notice and a publisher's affidavit.

(e) Published notice. When notice is required to be published under §39.802 of this title (relating to Public Comment and Notice), the owner or operator shall publish notice in the newspaper of largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located. The requirements of this subsection may be satisfied by one publication if the newspaper is both published in the county and is the newspaper of largest general circulation in the county.

(f) Copy availability. The owner or operator shall make a copy of the application, preferred response action and/or the proposed post-closure order, or proposed decision that remedial action is complete, available for review, and copying at a public place in the county in which the facility is located or proposed to be located. The copy of the document compelling public notice shall comply with the following.

(1) A copy of the application, proposed post-closure order, or proposed decision that remedial action is complete must be available for review and copying beginning on the first day of newspaper publication of notice of receipt of application and intent to obtain post-closure order and remain available for the publication's designated comment period.

(2) A copy of the complete application, proposed post-closure order, or proposed decision that remedial action is complete (including any subsequent revisions to the application) must be available for review and copying beginning on the first day of newspaper publication required by

this section and remain available until the commission has taken action on the application or the commission refers issues to SOAH.

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§39.804. Text of Public Notice.

(a) Applicants shall use notice text provided and approved by the agency. The executive director may approve changes to notice text before notice is given.

(b) When notice of receipt of application and intent to obtain post-closure order, notice of proposed order, or notice of proposed decision that remediation action is complete, by publication or by mail as required by this subchapter, the text of the notice must include the following information:

- (1) the name, address, and telephone number of an agency contact from whom interested persons may obtain further information;
- (2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;
- (3) a brief description of the location and nature of the proposed activity;
- (4) a brief description of public comment procedures including a statement that the executive director will respond to comments raising issues that are relevant and material or otherwise significant;
- (5) the application, solid waste registration number, or post-closure order number;
- (6) if applicable, a statement that the application or requested action is subject to the Texas Coastal Management Program (CMP) and must be consistent with the CMP goals and policies;
- (7) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;
- (8) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application; and
- (9) any additional information required by the executive director or needed to satisfy public notice requirements of any federally-authorized program.

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§39.805. Mailed Notice.

When this subchapter requires mailed notice, the chief clerk shall mail notice to:

- (1) the landowners named on the application map, supplemental map, or the sheet attached to the application map or supplemental map;
- (2) the mayor and health authorities of the city or town in which the facility is or will be located or in which waste is or will be disposed of;
- (3) the county judge and health authorities of the county in which the facility is or will be located or in which waste is or will be disposed of;
- (4) the Texas Department of Health;
- (5) the Texas Parks and Wildlife Department;
- (6) the Texas Railroad Commission;
- (7) if applicable, local, state, and federal agencies for which notice is required in 40 Code of Federal Regulations (CFR) §124.10(c), as amended and adopted in the May 2, 1989 issue of the *Federal Register* (54 FR 18786);
- (8) if applicable, persons on a mailing list developed and maintained in accordance with 40 CFR §124.10(c)(1)(ix);
- (9) the owner or operator of the facility;
- (10) persons on a relevant mailing list kept under §39.407 of this title (relating to Mailing Lists);
- (11) any other person the executive director or chief clerk may elect to include;
- (12) if applicable, the secretary of the Coastal Coordination Council;
- (13) persons who filed public comment or hearing requests on or before the deadline for filing public comment or hearing requests;
- (14) the state senator and representative who represent the general area in which the facility is located or proposed to be located; and

(15) the river authority in which the facility is located or proposed to be located if the document compelling public notice and comment is under Texas Water Code, Chapter 26.

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§39.806. Notice of Receipt of an Application and Intent to Obtain a Post-Closure Order.

(a) When the executive director determines that an application is administratively complete, the chief clerk shall mail the notice of receipt of an application and intent to obtain a post-closure order to the applicant.

(b) Not later than 30 days after the executive director declares an application administratively complete, the notice of receipt of an application and intent to obtain a post-closure order:

(1) the applicant shall publish the notice of receipt of an application and intent to obtain a post-closure order once under §39.803 of this title (relating to General Notice Provisions);

(2) the chief clerk shall mail the notice of receipt of an application and intent to obtain a post-closure order to those listed in §39.805 of this title (relating to Mailed Notice); and

(3) the notice must include the information required by §39.804 of this title (relating to Text of Public Notice).

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§39.807. Notice of Proposed Post-Closure Order and Preliminary Decision.

(a) Prior to final approval of the proposed order, the executive director shall file the proposed post-closure order with the chief clerk.

(b) Not later than 30 days after the executive director files the proposed post-closure order with the chief clerk:

(1) the applicant shall publish the notice of the proposed order and preliminary decision once under §39.803 of this title (relating to General Notice Provisions);

(2) the chief clerk shall mail the notice of a proposed post-closure order to those listed in §39.805 of this title (relating to Mailed Notice); and

(3) the notice of a proposed post-closure order must include the applicable information required by §39.804 of this title (relating to Text of Public Notice), including the assumptions the response action was based on, in particular those related to land use characterization.

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§39.808. Notice of a Proposed Decision that Remedial Action is Complete.

(a) Prior to the executive director's determination that the remedial action is complete, the executive director shall file the proposed decision that remedial action is complete with the chief clerk.

(b) Not later than 30 days after the executive director files the proposed decision that remedial action is complete with the chief clerk:

(1) the applicant shall publish notice of a proposed decision that remedial action is complete once under §39.803 of this title (relating to General Notice Provisions);

(2) the chief clerk shall mail the notice of a proposed decision that remedial action is complete to those listed in §39.805 of this title (relating to Mailed Notice); and

(3) the notice of a proposed decision that remedial action is complete must include the applicable information required by §39.804 of this title (relating to Text of Public Notice).

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§39.809. Notice for Amendments to Post-Closure Orders.

(a) When the executive director determines that an application for an amendment to a post-closure order is technically complete, the chief clerk shall mail the notice of application and preliminary decision to the applicant.

(b) Not later than 30 days after the executive director declares an application technically complete the notice of application and preliminary decision:

(1) the applicant shall publish the notice of application and preliminary decision once under §39.803 of this title (relating to General Notice Provisions);

(2) the chief clerk shall mail the notice of receipt of an application and preliminary decision to those listed in §39.805 of this title (relating to Mailed Notice); and

(3) the notice must include the information required by §39.804 of this title (relating to Text of Public Notice).

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§39.810. Notice of Post-Closure Order Contested Case Hearing.

For any post-closure order contested case hearing, the chief clerk shall mail notice to the statutory parties, applicant, and persons who have requested to be on a mailing list for the pleadings in the action no less than 13 days before a hearing in accordance with APA, §2001.052. In addition,

public notice and opportunity for comment before the commission relating to a proposed action shall be given under Chapter 10 of this title (relating to Commission Meetings).

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